**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929**

**WP(C).No. 23343 of 2004(D)**

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**PETITIONERS:**

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1. **P.N. RAMESH RAJU, ASSISTANT DEVELOPMENT COMMISSIONER, COMMISSIONERATE OF RURAL DEVELOPMENT, THIRUVANANTHAPURAM.**

2. **K.D. GOVIDANKUTTY, ASSISTANT DEVELOPMENT COMMISSIONER, RURAL DEVELOPMENT DEPARATMENT, (ON DEPUTATION AS CO-ORDINATOR TO KERALA RURAL WATER SUPPLY AND SANITATION AGENCY) AYYANTHOLE, THRISSUR.)**

3. **K. ANTONY, ASSISTANT DEVELOPMENT COMMISSIONER, COMMISSIONERATE OF RURAL DEVELOPMENT, THIRUVANANTHAPURAM.**

**BY ADV. SRI.ELVIN PETER P.J.**
**SRI.S.RAMESH**
**SRI.P.N.SANTHOSH**
**SRI.S.D.ASOKAN**
**SRI.NAVEEN.T**

**RESPONDENTS:**

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1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE COMMISSIONER FOR RURAL DEVELOPMENT L.M.S. COMPOUND, THIRUVANANTHAPURAM.**

3. **C. SAHADEVAN, UNDER SECRETARY TO GOVERNMENT, ON OTHER DUTY AS ASSISTANT PRIVATE SECRETARY TO MINISTER FOR FOOD AND CIVIL SUPPLIES, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

4. **E.M. THOMAS, DEPUTY SECRETARY TO GOVERNMENT, ON OTHER DUTY AS ADDITIONAL PRIVATE SECRETARY TO MINISTER FOR RURAL DEVELOPMENT GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

**BY ADV. SRI.T.A.SHAJI**
**BY GOVERNMENT PLEADER SRI. P. NANDAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

## APPENDIX

**PETITIONER'S EXHIBITS:**

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| **EXT.P1:** | **COPY OF ORDER, G.O.(MS) NO.42/95/GAD DTD. 28/01/1995 ISSUED BY THE GOVERNMENT.** |
| **EXT.P2:** | **COPY OF ORDER NO.EST.A1-49625/90/CRD (ii) DTD. 28/09/1993 ISSUED BY THE 2ND RESPONDENT.** |
| **EXT.P3;** | **COPY OF ORDER NO.CRD (M1) 999/88 (1) DTD. 29/04/1988 ISSUED BY THE 2ND RESPONDENT.** |
| **EXT.P4:** | **COPY OF ORDER NO.90854/SE1/94/GAD DTD. 28/08/1995 ISSUED BY THE GOVERNMENT.** |
| **EXT.P5:** | **COPY OF ORDER NO.90854/SE1/94GAD DTD. 28/08/1995 ISSUED BY THE GOVERNMENT.** |
| **EXT.P6:** | **COPY OF ORDER NO.94827/SE1/99/GAD DTD. 26/08/2000 ISSUED BY THE GOVT. TO THE 1ST PETITIONER.** |
| **EXT.P6(A);** | **COPY OF ORDER NO.94827/SE1/99/GAD DTD. 26/08/2000 ISSUED BY THE GOVT. TO THE 2ND PETITIONER.** |
| **EXT.P6(B):** | **COPY OF ORDER NO.94827/SE1/99/GAD DTD. 26/08/2000 ISSUED BY THE GOVT. TO THE 3RD PETITIONER.** |
| **EXT.P7:** | **COPY OF REPRESENTATION DTD. 2/06/2003 FILED BY THE PETITIONER NO.1 TO THE GOVERNMENT.** |
| **EXT.P8:** | **COPY OF REPRESENTATION DTD. 30/05/2003 FILED BY THE 2ND PETITIONER TO THE GOVERNMENT.** |
| **EXT.P9:** | **COPY OF REPRESENTATION DTD. 29/05/2003 FILED BY THE 3RD PETITIONER TO THE GOVERNMENT.** |
| **EXT.P10:** | **COPY OF JUDGMENT DTD. 12TH JANUARY, 2004 IN WP(C) NO. 1054/04 OF THIS HON'BLE COURT.** |
| **EXT.P11:** | **COPY OF PETITION FOR EXTENSION OF TIME FILED BY THE GOVERNMENT IN WP9C) NO.1054/2004 DTD. 28/02/2004.** |
| **EXT.P12:** | **COPY OF APPLICATION FOR EXTENSION OF TIME FILED BY THE GOVERNMENT IN WP(C) NO.1054/2004 DTD. NIL.** |
| **EXT.P13:** | **COPY OF APPLICATION FOR CONDONATION OF DELAY FILED BY THE GOVT. IN WP(C) 1054/2004.** |

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WPC.NO.23343/2004 D

EXT.P14: COPY OF JUDGMENT DTD. 21ST JANUARY, 2004 IN WP(C) NO. 2424/2004 OF THIS HON'BLE COURT.

EXT.P15: COPY OF APPLICATION FOR EXTENSION OF TIME FILE BY THE GOVERNMENT IN WP(C)NO.2424/2004.

EXT.P16: COPY OF APPLICATION FOR EXTENSION OF TIME FILED BY THE GOVERNMENT IN WP(C) NO.2424/2004.

EXT.P17: COPY OF CIRCULAR NO.768/R1/2004/P&ARD DTD. 20TH MARCH,2004 ISSUED BY THE GOVERNMENT.

EXT.P18; COPY OF CIRCULAR NO.768/R1/2004/P&ARD DTD. 26TH MARCH,2004 ISSUED BY THE GOVERNMENT.

EXT.P19: COPY OF COMMUNICATION NO.ESTT.A1.6818/04/CRD. DTD. 24/04/2004 SENT BY THE 2ND RESPONDENT TO THE GOVT.

EXT.P20; COPY OF ORDER G.O.(MS) NO.1020/96/LEG. DTD. 25/10/1996 ISSUED BY THE GOVERNMENT.

EXT.P21: COPY OF JUDGMENT DTD. 20TH FEBRUARY, 2003 IN O.P.NO.6005/2002 OF THIS HON.COURT.

EXT.P22: COPY OF ORDER G.O.(RT) NO.915/2003/ID DTD. 1/09/2003 ISSUED BYTHE GOVERNMENT.

EXT.P23: COPY OF ORDER G.O.(RT) NO.1308/03/ID DTD. 18/12/2003 ISSUED BY THE GOVERNMENT.

EXT.P24: COPY OF CIRCULAR NO.768/R1/2004/P&ARD DTD. 12TH MAY,2004 ISSUED BY THE GOVT.

EXT.P25: COPY OF COMMUNICATION NO.3448/EB1/2004/LSGD. DTD. 21/05/2004 FROM THE 2ND RESPONDENT TO THE GOVT.

EXT.P26: COPY OF COMMUNICATION NO.3061/EA3/2004/LSGD DTD.22/06/2004 FROM THE GOVERNMENT TO THE 2ND RESPONDENT.

EXT.P27: COPY OF COMMUNICATION NO.ESTT.A1/6818/2004/CRD. DTD. 7/06/2004 FROM THE 2ND RESPONDENT TO THE GOVERNMENT.

EXT.P28: COPY OF COMMUNICATION NO.3061/EA3/2004/LSGD. DTD. 22/06/2004 ISSUED BY THE GOVERNMENT TO THE 2ND RESPONDENT.

EXT.P29: COPY OF COMMUNICATION NO.ESTT.A1.6818/2004/CRD. DTD. 24/06/2004 FROM THE 2ND RESPONDENT TO THE GOVERNMENT.

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**EXT.P30:** COPY OF COMMUNICATION NO.3601/EA3/2004/LSGD DTD. 7/07/2004 ISSUED BY THE GOVT. TO THE 2ND RESPONDENT.

**EXT.P31:** COPY OF ORDER NO.ESTT.A1/6818/2004/CRD DTD. 8/07/2004 ALONG WITH THE APPENDIX ATTACHED TO THAT.

**EXT.P32:** COPY OF ORDER G.O.(RT) NO.4806/04/GAD DTD. 9/07/2004 ISSUED BY THE GOVERNMENT.

**EXT.P33:** COPY OF ORDER, G.O.(RT) NO.4804/04/GAD DTD. 9/07/2004 ISSUED BY THE GOVERNMENT.

**EXT.P34:** COPY OF ORDER NO.ESTT.A1/40394/2004/CRD DTD. 15/10/2005 ISSUED BY THE 2ND RESPONDENT.

**/TRUE COPY/**

**P.A.TO JUDGE**

*KSS*

K.BALAKRISHNAN NAIR, J.

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W.P.(C) No.23343 of 2004-D

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Dated this the 13th day of July, 2007.

**J U D G M E N T**

The petitioners were Assistants in the Administrative Secretariat. The first petitioner joined service as Assistant Grade-II on 4-2-1978. He was promoted as Assistant Grade-I with effect from 4-12-1980 and still later as Senior Assistant with effect from 16-9-1985. The second petitioner was appointed as Assistant Grade-II on 30-12-1978. He was promoted as Assistant Grade-II and Senior Assistant on 28-12-1980 and 16-9-1985 respectively. The third petitioner was appointed as Assistant Grade-II on 2-12-1978. He was promoted as Assistant Grade-I with effect from 4-12-1980 and still later as Senior Assistant with effect from 16-9-1985. The probation of the petitioners in the category of Assistant Grade-II was declared by Government Order dated 28-1-1995. While working as Senior Grade Assistant, they applied for appointment by transfer as Block Development Officer in the Rural Development Department. On the basis of the advice of the Public Service Commission, the petitioners 1 and 2 were appointed by transfer in the post of Block Development Officer by Ext.P2 order dated 28-9-1993. The third petitioner was appointed by transfer to the said post on 29-4-1988 by Ext.P3. While continuing as Block Development Officers, the petitioners submitted representations dated 21-4-1994, 21-4-1994 and 11-2-

1997 claiming repatriation to their parent department, namely the Administrative Secretariat. But, their representations were rejected by the Government by Ext.P4 dated 28-8-1995, Ext.P5 dated 28-8-1995 and Ext.P6 (b) dated 26-8-2000.

2. The petitioners pointed out that the Government by various orders passed between 1990 and 1992 have granted similar requests made by similarly placed persons. Their claim was fully covered by the decision of this Court in Balakrishnan Nair Vs. Ram Mohan Nair (1998 (1) KLT 766 (F.B). But the Government shuffled on the ground that the Special Leave Petition filed by the affected parties were pending before the Apex Court. Finally, the Hon'ble Supreme Court affirmed the above decision by the decision reported in Ali Vs. State of Kerala (2003 (2) KLT 922 (SC). After the said decision, the petitioners again moved the Government, by filing Exts.P7, P8 and P9 representations. Feeling aggrieved by the delay from the part of the Government to consider those representations, the petitioners 1 and 2 filed W.P.(C) 1054 of 2004. This Court by Ext.P10 judgment directed the Government to consider and pass orders on Exts.P7 and P8. Similarly, the third petitioner moved this Court by filing W.P.(C) 2424 of 2004. The said writ petition was disposed of by Ext.P14 judgment directing the Government to consider Ext.P9 representation. The Government, instead of complying with the directions, in time, went on filing applications for extension of time which are produced as Exts.P11, P12, P13, P15 and P16 in this writ petition. While so, the Government issued Ext.P17 Circular dated 20-3-2004 directing to allow the application for repatriation by the persons like the petitioners.

Soon thereafter, Ext.P18 has been issued ordering keeping in abeyance Circular dated 20-3-2004. While so, the second respondent sent Ext.P19 communication to the Government stating that the petitioners are entitled to go back to the parent department and enjoy the promotions available there. The petitioners further pointed out that by Ext.P20 Government Order dated 25-10-1996, even before the Full Bench decision mentioned above, the Government have allowed a Section Officer appointed as Block Development Officer in the Rural Development Department to come back to the parent department. The petitioners also relied on Ext.P21 judgment wherein this Court directed reversion of the petitioner to his parent department. The said direction was implemented by the Government by Ext.P22 Government Order. It is also pointed out that the petitioner therein have been further promoted in the industries department as per Ext.P23. While so, the Government issued Ext.P24 Circular directing the appointing authorities in all the departments to confirm the employees under Rule 24 of the KS & SSR who are eligible for the same. The Government by Ext.P26 issued directions to confirm all those officers appointed by transfer to the Rural Development Department. The second respondent replied to the said order by Ext.P27 dated 7-7-2004 stating that such officers should be given option before confirming them in the Rural Development Department. Soon thereafter, the Government issued Ext.P28 directing that all those who completed the period of probation in the Rural Development Department should be confirmed in that department. It was followed by Ext.P30 communication issued by the Government directing to confirm the petitioners

in the Rural Development Department. Based on Ext.P30, Ext.P31 order was issued on 8-7-2004 confirming the petitioners into the Rural Development Department. In the light of Ext.P31, the representation of the petitioners 1 and 2 for repatriated to the Administrative Secretariat was rejected by Ext.P32. Similarly, the application for repatriation of the third petitioner was also rejected by Ext.P33 order dated 9-7-2004. This writ petition is filed challenging Exts.P24, 25, 26, 28, 30, 31, 32 and 33. While so, Ext.31 was challenged before this Court by one of the affected persons. This Court quashed that order in so far as it affects the petitioner therein. This Court found that the number of persons confirmed does not have any relationship to the number of sanctioned posts of Block Development Officers available in the Rural Development Department. Based on that judgment, the Government considered the entire case and again confirmed the petitioners and others with some slight change in the date of confirmation. So, the writ petition was amended challenging the said order also which is produced as Ext.P34. The petitioners attack the impugned orders on the following grounds.

(i). According to them, they have moved for repatriation long ago. There were judgments of this Court also to consider their claim. So, to defeat their rights, the confirmation was given with retrospective effect. So, the said action is vitiated by malafides. They also point out that a newly appointed Block Development Officer will be on probation for a period of two years within a continuous period of 3 years. The petitioners point out that

petitioners 1 and 2 joined duty pursuant to the appointment order dated 28-9-1993 in the post of Block Development Officer on 16-10-1993 and 18-10-1993 respectively. Their probation to that post was declared with effect from 15-10-1995 and 18-10-1995 respectively. But, under Ext.P34, they are confirmed with effect from 1-12-1993 and 1-7-1994. The third petitioner was appointed by order dated 29-4-1988 and he joined duty on 4-5-1988. His probation was declared with effect from 5-5-1990 and he was confirmed on 1-10-1991. It is pointed out that int he case of petitioners 1 and 2 they could have been confirmed only after their probation was declared in October 1992. They would point out that going by Rule 24 of the KS & SSR the incumbent can be confirmed only they are approved probationers. So their confirmation ordered in this case is void ab initio. Further, they have already represented on 21-4-1994 for repatriation. So, they submit that their applications are liable to be allowed. In the case of the third petitioner, it is pointed out that even if he was confirmed only after declaration of probation, and he applied for repatriation thereafter, by virtue of Rule 8 he is entitled to come back.

3. The first respondent has filed a counter affidavit supporting the impugned orders. According to the said respondent, since the probation of the petitioners in the transfer department is declared and they were confirmed they are not entitled to come back as long as there is post available int he said department to accommodate them. The learned counsel for the petitioners relied on the Full Bench decision of this Court mentioned above which was affirmed by the Apex Court also. The learned Government

Pleader also relied on the very same decision in support of his argument.

4. The confirmation under Rule 24 of the KS & SSR of an approved probationer as a full member has to be done at the earliest possible opportunity. So, even if there is administrative delay in ordering confirmation, it will take effect from the date of occurrence of substantive vacancy after the probation of the incumbent is declared. So, the Government should be considered power to declare confirmation with retrospective effect and if it is correctly done, it will have all legal consequences also. In the case of the third petitioner, the confirmation was done after he became an approved probationer. So, it has to be upheld as a valid confirmation. His application for repatriation was submitted only thereafter. So, in view of the Full Bench decision and also the provisions of Rule 8 of the KS & SSR the third petitioner is not entitled to come back. So, the rejection of his application for repatriation to the parent department is upheld.

5. But, If feel that the case of the petitioners 1 and 2 stand on a different footing. They could have been confirmed only in the substantive vacancies that arose after 15-5-1995 and 18-5-1995 respectively. In fact, they moved for repatriation before that date by submitting applications on 21-4-1994. Those applications were either not considered or wrongly considered. If the said applications were properly dealt with when it was submitted, they are entitled to come back as they are only probationers at that time int he light of the Full Bench decision in Balakrishnan Nair's case. Therefore, the impugned orders to the extent the claim of the petitioners 1

and 2 and also to the orders confirming them with effect from 1-12-1993 and 1-12-1994 are quashed. The petitioners 1 and 2 are liable to be revered to the Administrative Secretariat, in the light of the principles laid down by this Court in Ext.P21 judgment. They are also entitled to be considered for further promotions that they could have earned had they been continued in the Administrative Secretariat. The claim of the petitioners in this regard shall be considered by the Government in accordance with law, within four months from the date of production of a copy of this judgment.

The Writ Petition is allowed as above.

K.BALAKRISHNAN NAIR,
JUDGE.

MS